

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
ARTESIAN WATER COMPANY, INC., FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE AND )  
NECESSITY TO PROVIDE WATER SERVICES TO )  
SIXTY PARCELS OF LAND; FIFTY-FOUR ) PSC DOCKET NO. 04-CPCN-01  
PARCELS LOCATED ON BIG OAK ROAD AND ) (BIG OAK & BIG WOODS ROADS)  
BIG WOODS ROAD IN DUCK CREEK HUNDRED, )  
AND SIX PARCELS LOCATED ON ROUTE 13 IN )  
LITTLE CREEK HUNDRED, KENT COUNTY, )  
DELAWARE (FILED FEBRUARY 9, 2004) )

**ORDER NO. 6389**

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO PROVIDE PUBLIC WATER UTILITY SERVICE**

This 6th day of April, 2004, the Commission finds, determines,  
and Orders the following:

**I. BACKGROUND**

1. Artesian Water Company, Inc. ("Applicant"), is a water utility providing water service for public use that is subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On February 9, 2004, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water service to sixty parcels ("Proposed Service Area") located along Big Oak Road, Big Woods Road, and Route 13 in portions of Duck Creek Hundred and Little Creek Hundred, Kent County, Delaware, as specifically described by the parcels' tax identification numbers set forth in an exhibit to the Application. Application ¶ 6.

2. The Application includes petitions signed by the majority of the landowners within the Proposed Service Area, and evidence that the required Commission notice of the Application was sent via certified mail to all landowners within the Proposed Service Area. The notice explained each landowner's opportunity to object, to request a hearing, and to "opt-out," that is, to exclude the landowner's property from the Proposed Service Area.

3. Staff directed the Applicant to publish a Commission approved notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the date the notice was published, which occurred on February 26, 2004 for this Application.

4. The Commission received a letter dated January 19, 2004 from Luke Chappel, an owner of two parcels who elected to have his two parcels, identified in the Application as DC 00-028.00-02-07.00 and DC 00-028.00-02-07.01, "opted-out" or removed from the Proposed Service Area. The Commission did not receive any request for a hearing on the Application, or any objection to the Application.

## **II. SUMMARY OF THE EVIDENCE**

5. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) petitions signed by the majority of landowners within the Proposed Service Area (¶ 1(d));

- (ii) copies of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice of the Application to all landowners within the Proposed Service Area (Application ¶ 5);
- (iii) the County tax identification numbers of the parcels in the Proposed Service Area (Application ¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and tax maps locating all the parcels (Application ¶ 7);
- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a)&(b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (Application ¶ 8 (a)-(d));

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application on February 26, 2004 in the Delaware State News and in The News Journal newspapers;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested receiving by March 15, 2004 any written comments on the Application;
- (iii) letters dated February 26, 2004 and March 15, 2004, from the Office of Drinking Water of the Division of Public Health and the Office of the State Fire Marshal, respectively, reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iv) Staff's March 24, 2004 memorandum of its investigation and its recommendation that the Commission approve the Application and issue a CPCN for the Proposed Service Area,

as modified by the "opt-out" or removal of the two parcels. Staff also indicates that the Department of Natural Resources and Environmental Control ("DNREC") previously had informed Staff that DNREC would provide written comments only if it had an objection to an application, and Staff notes that DNREC did not submit any written comments on this Application. Staff further reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN; and

- (v) the January 19, 2004 letter from Luke Chappel that provided notice of the "opt-out" or removal of his properties from the Proposed Service Area.

7. Finally, the record does not contain any evidence that any person objects to the application or requests a hearing.

### **III. FINDINGS OF FACT & CONCLUSIONS OF LAW**

8. The Commission concludes it has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities if the water utility satisfies the legal and factual requirements. The Commission finds that Applicant operates a water system for public use and, consequently, is a water utility. The Commission further finds that Applicant has satisfied the legal and factual requirements for a CPCN in its Application for issuance of a CPCN to serve the Proposed Service Area, as amended by the removal of the property subject to its owner's "opt-out."

9. The evidence shows that the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). The record also reflects that the Applicant sent by certified mail a Commission approved notice of its Application to all owners of parcels within the

Proposed Service Area in compliance with Commission regulations. Furthermore, the record reflects that the Commission received no objection to, nor a request for, a hearing on this application. Finally, the Applicant satisfied the legal requirements by submitting a statement that the Applicant will continue to meet the water pressure requirements for its existing customers, and that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

10. The Commission received an "opt-out" notice from the owner of two parcels, and this notice removes the owner's two parcels from the Proposed Service Area.

11. The record also contains the Commission Staff's independent review of the Application, and Staff, based upon its investigation, recommends approval because Staff did not discover that the Applicant is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water services to its existing customers.

12. In summary, the Applicant submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1), 203C(e)(1) b., & 203C(e)(3) (2002 Supp.), which the Commission's Staff reviewed and found to be accurate. The Commission also finds no reason that the Applicant is not entitled to a CPCN under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i) (2001 Supp.). Since the Applicant has satisfied the statute's requirements, the Commission shall issue a CPCN permitting the Applicant to expand its operations to provide



PSC Docket No. 04-CPCN-01, Order No. 6389 Cont'd.

/s/ Joann T. Conaway  
Commissioner

/s/ Donald J. Puqlisi  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary

**E X H I B I T   "A"**

**APPROVED SERVICE AREA  
PARCELS WITHIN CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

**KENT COUNTY, DELAWARE**

**KENT COUNTY TAX MAP PARCELS NOS.**

**DUCK CREEK HUNDRED**

00-019.00-02-24.00	00-028.00-02-11.00	00-028.00-02-28.00
00-019.00-02-24.01	00-028.00-02-12.01	00-028.00-02-31.00
00-019.00-02-25.00	00-028.00-02-12.02	00-028.00-02-32.00
00-028.00-02-08.01	00-028.00-02-12.03	00-028.00-02-33.00
00-028.00-02-01.00	00-028.00-02-14.00	00-028.00-02-33.01
00-028.00-02-04.00	00-028.00-02-14.01	00-028.00-02-33.02
00-028.00-02-08.00	00-028.00-02-14.02	00-028.00-02-34.00
00-028.00-02-08.03	00-028.00-02-15.00	00-028.00-02-35.00
00-028.00-02-03.00	00-028.00-02-27.00	00-028.00-02-36.00
00-028.00-02-05.00	00-028.00-02-27.01	00-028.00-02-37.00
00-028.00-02-05.01	00-028.00-02-18.00	00-028.00-02-38.01
00-028.00-02-06.00	00-028.00-02-40.00	00-028.00-02-38.02
00-028.00-02-06.01	00-028.00-02-41.00	00-028.00-02-42.00
00-028.00-02-06.02	00-028.00-02-21.00	00-028.00-02-43.00
00-028.00-02-06.03	00-028.00-02-22.00	00-028.00-02-43.01
00-028.00-02-09.00	00-028.00-02-23.00	00-028.00-02-44.00
00-028.00-02-10.00	00-028.00-02-24.00	
00-028.00-02-12.00	00-028.00-02-26.00	

**LITTLE CREEK HUNDRED**

00-037.00-01-10.00

00-037.00-01-11.00

00-037.00-01-11.01

00-037.00-01-12.01

00-037.00-01-12.02

00-037.00-01-12.00